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Nos. 99-1257, 99-1263, 99-1265

IN THE
SUPREME COURT OF THE UNITED STATES

Carol. M. Browner, Administrator of the
United States Environmental Protection Agency, *et al.*,
Petitioners

v.

American Trucking Associations, Inc., *et al.*,
Respondents/Cross-Petitioners

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

AMICUS CURIAE BRIEF FOR THE MANUFACTURERS ALLIANCE/MAPI INC. IN SUPPORT OF RESPONDENTS AND CROSS-PETITIONERS AMERICAN TRUCKING ASSOCIATIONS, *ET AL.*

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AMICUS CURIAE BRIEF FOR THE MANUFACTURERS ALLIANCE/MAPI INC.[1]

INTEREST OF AMICUS CURIAE[2]

The Manufacturers Alliance/MAPI Inc. ("MAPI") is organized as a nonprofit research and educational institution, as defined in the Internal Revenue Code, 26 U.S.C. §501(c)(6), and is supported today by some 450 manufacturing companies. MAPI also operates the Institute for Technological Advancement, a nonprofit research and educational institution as defined under Section 501(c)(3) of the Internal Revenue Code. MAPI owes its existence in its present form to the Court's decision in *A.L.A. Schechter*

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[1] Pursuant to Supreme Court Rule 37.6, in addition to Counsel identified on the cover, Brian Mannix, MAPI's Director of Science and Technology Studies, participated in authoring this brief. No entity other than MAPI provided financial support for this brief.

[2] The consent of the parties to the filing of the *amicus curiae* brief has been obtained and filed with the Clerk of the Court.

Poultry Corp. v. United States, 295 U.S. 495 (1935) ("*Schechter Poultry*").

MAPI was originally organized as the Machinery and Allied Products Institute, an "industry association" under the National Industrial Recovery Act of 1933 ("NIRA"), for the purpose of drafting a "code of fair competition" for corporations in SIC Code 35, Machinery and Allied Products. The economic philosophy underlying NIRA – that the nation suffered from excess investment in productive capacity and would benefit from government-imposed restraints on competition and on new capital investment – was anathema to manufacturers of machinery and equipment. NIRA's direct restrictions on the purchase of new machinery was particularly troubling to members of SIC Code 35.

Thus, far from embracing its role as a "co-delegatee" with the National Recovery Administration, MAPI's founders recoiled from the code-development tasks they were directed to undertake. From its origin, MAPI was charged by its members with developing public policy arguments in support of economic expansion, technological innovation, and productivity growth, and in opposition to detrimental government restraints on capital investment.

After the Court vacated NIRA in *Schechter Poultry*, MAPI turned its energies to its research and education mission, which continues today. The petition and cross-petitions now before the Court involve MAPI's longstanding interest in the nondelegation doctrine as well as its longstanding opposition to broad governmental restrictions on economic growth and technological innovation.

Of particular interest to MAPI members are the sorts of restrictions on new capital investment that are typically imposed under the Clean Air Act within areas designated as "nonattainment" with respect to the ozone and particulate matter National Ambient Air Quality Standards ("NAAQS") at issue in this case. Just as such capital investment restrictions were not economically beneficial in 1935, they are not environmentally beneficial in 2000.

Among MAPI's members are the developers and producers of catalytic converters, fuel injectors, air bags, advanced power generation systems, gas turbines, and many other technologies that improve our lives in myriad ways. The members of MAPI are proud of the contributions they make to safety, fuel economy, and a cleaner environment, and they know that these desiderata do not flow from the tip of the regulator's pen. In its comments on the Office of Management and Budget's 1998 draft Report to Congress on the Costs and Benefits of Federal Regulations MAPI noted:

> Automobile manufacturers and their suppliers devote considerable resources to improving vehicle safety. The benefits NHTSA attributes to its regulation are, in fact, returns on the investment made by manufacturers. The people who work in product and materials research, manufacturing, quality systems, and even – perhaps especially – marketing, like to think that their efforts and their resourcefulness have contributed to the safety of modern cars. The same is also true for environmental benefits and other categories of regulatory benefits – rule writers may have helped, but they did not accomplish all these things on their own.

The substantial progress that has been made in safety and environmental quality over the past 65 years is the product of hard work, creativity, innovation, and capital investment.

Blanket restrictions on new capital investment are a blunt instrument for cleaning the air, and one that was intended to be used only as a temporary measure and only in isolated problem spots. Notwithstanding the demonstrable progress that has been made in air quality, EPA's revised NAAQS would perpetuate and dramatically expand the geographic scope of the nonattainment regulatory regime. The result will be very serious adverse consequences for our nation's economic prosperity, and no or even negative benefits for our environment.

SUMMARY OF ARGUMENT

The delegation of legislative authority in Section 109 of the Clean Air Act – as EPA would interpret it – is as broad, costly, standardless, and as inimical of political accountability as any comparable regulatory delegation since NIRA. Moreover, the delegation issue in this case is likely to recur with more regularity, because of dynamic developments in scientific knowledge and technology. The new paradigmatic case features: (1) a broad delegation to an agency; (2) profound changes in facts, science, or technology; (3) that were not directly addressed by Congress and (4) for which Congress made no administrative provision. Under these circumstances an intelligible principle in the original legislative delegation may no longer provide a meaningful guide to administrative action. This is just such a case.

"[W]hile the doctrine of unconstitutional delegation is unquestionably a fundamental element of our constitutional system, it is not an element readily enforceable by the courts." *Mistretta v. United States*, 488 U.S. 361, 415 (1989) (Scalia, J., dissenting). MAPI respectfully submits that the Court can mitigate these enforcement difficulties by granting *certiorari* and reaffirming that: (a) only Congress may "establish [or expand] the standard of legal obligation" in the Clean Air Act; (b) both courts and agencies should utilize a narrow rule of construction for nondelegation cases such as this; (c) courts should give greater latitude to forms of delegation that provide a "balancing" principle for administrative action; and (d) a judicial preference for vacating rules rather than statutes is a reasonable and practical way to enforce the constitutional separation between the two political branches without wreaking unnecessary havoc on legislative and administrative processes.

ARGUMENT

I. THIS CASE PRESENTS THE BEST OPPORTUNITY SINCE *BENZENE* FOR THE COURT TO CLARIFY THE LIMITS OF AGENCY DISCRETION WHEN CONGRESS DELEGATES BROAD POWER OVER THE U.S. ECONOMY, BUT FAILS TO PROVIDE AN "INTELLIGIBLE PRINCIPLE" THAT ENCOMPASSES THE AGENCY'S ACTION.

We agree with petitioner EPA and cross-petitioners ATA, *et al.*, that this case presents "an important issue of federal law that has not been, but should be, settled by this Court." Supreme Court Rule 10(c). We do not agree with petitioner EPA, however, that *certiorari* is warranted because the D.C. Circuit "has decided an important federal question in a way that conflicts with relevant decisions of this Court." Contrary to EPA's assertion, the decision of the Court of Appeals is not a "radical departure from settled law;" but it does, as EPA points out, "raise[] questions respecting the constitutionality of a broad range of federal statutes requiring agencies to draw lines based on scientific judgments." EPA Petition at 9.

The Court of Appeals correctly recognized the vast delegation created by EPA's interpretation of its authority under Section 109 of the Clean Air Act. Citing *Schechter Poultry*, it noted that a "more precise" delegation is required because "the standards in question affect the whole economy." 175 F.3d at 1037. Moreover, the Court of Appeals found that the breadth of the delegation significantly exceeded another regulatory statute with a more focused reach on the U.S. economy where the Court of Appeals had found it necessary to fashion "intelligible principles" to constrain the agency's legislative discretion, *id.*, citing *International Union, UAW v. OSHA (Lockout/Tagout I)*, 938 F.2d 1310 (D.C. Cir. 1991) (discretion to "do nothing at all"

or "take the industry to the brink of ruin," with "all positions in between" would be unconstitutional). *Id.* Here, EPA's discretion runs from doing "close to nothing at all" to "send[ing] industry not just to the brink of ruin but hurtling over it," *Id.* Nor are there any "special theories," such as the war powers of the President, to justify an excessive delegation. *Id.*

In the years since *Schechter Poultry*, the nondelegation doctrine has continued to serve as one of the bulwarks of the constitutional separation of powers. This brief addresses the respective authorities and responsibilities of the three Branches of Government in this type of case. It also addresses other questions raised by petitioners and respondents to the extent that they bear on the meaning and application of the nondelegation doctrine.

A. The Court Should Grant *Certiorari* To Clarify The Application Of The Nondelegation Doctrine To Agency Policy Decisions That Profoundly Affect The Economy And Are Motivated By New (And Contested) Scientific Findings That Congress Neither Foresaw Nor Provided For.

The Court should grant *certiorari* not to reverse the decision of the Court of Appeals, which MAPI believes was essentially correct, but to provide guidance to agencies and reviewing courts as to the application of the nondelegation doctrine to the Clean Air Act and in similar contexts.

This case presents the question of what role the Court's nondelegation doctrine plays where advances in scientific knowledge or technology create a chasm between the factual context that an agency believes it is operating in and the factual context of the original legislation. By altering the meaning of even simple words like "safe" or "zero,"

scientific progress has the potential to render legislative decisions unrecognizable to those who made them.[3]

MAPI respectfully urges the Court to use this opportunity to clarify the proper role the nondelegation doctrine plays in reviewing broad congressional delegations of authority applied to facts that change as science and technology evolve. Twenty years have passed since this Court's decision in. *Industrial Union Dep't v. American Petroleum Institute,* 448 U.S. 607 (1980) (*"Benzene"*). Considering the vast reach of federal regulatory activities today, and the dramatic increase in health, safety, and environmental regulation grounded in scientific judgments, further guidance from the Court on the limits of delegation is necessary and timely.

This Court should grant *certiorari* in order to reaffirm that only Congress may "establish [or expand] the standards of legal obligation" (*Schechter Poultry*, 295 U.S. at 530) imposed in the Clean Air Act, and to provide guidance to EPA, to other Executive agencies, and to all reviewing courts as to their respective responsibilities where an "intelligible principle" is no longer apparent in the legislative delegation because of a change in facts, science, or technology, which Congress neither addressed nor foresaw.

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[3] *See* Randall Lutter and Christopher DeMuth, "Ozone and the Constitution at EPA" American Enterprise Institute (July 1999) at 2 ("But whatever its fate on further appeal or in subsequent cases, the decision has revealed a serious problem at the heart of our environmental laws. The problem is not simply a matter of executive-branch usurpation or legislative-branch abdication; it is inherent in the tension between rigid legislation and fluid science.").

B. The Court Should Grant *Certiorari* To Affirm That The Court Of Appeals Properly Rejected EPA's Interpretation Of Section 109 Of The Clean Air Act As Lacking Any "Intelligible Principle."

The Court of Appeals noted several "intelligible principles" that theoretically could have guided EPA's discretion in its administration of delegated legislative authority, including some that are often used under health/risk regulatory regimes, *e.g.*, cost-benefit analysis, zero-risk, and generic unit of harm. 175 F.3d at 1038-40. However, both EPA and the Court of Appeals believe that cost consideration has been unavailable since *Lead Industries Ass'n, Inc. v. EPA*, 647 F.2d 1130 (D.C. Cir.), *cert. denied*, 449 U.S. 1042 (1980).

With respect to the Clean Air Act, we agree with industry cross-petitioners that this Court's review should encompass current D.C. Circuit case law that reads Section 109 of the Clean Air Act as precluding EPA from considering cost or technological feasibility. We suspect that considerations of cost do in fact influence EPA's thinking, and there is some evidence to that effect in the record. *See* ATA Conditional Cross-Petition, at 37-38 (citing EPA's "soft" $10,000 per ton of emissions reductions compliance-cost cap). We agree with and incorporate by reference cross-petitioners compelling argument that the real culprit here is a wrongly decided *Lead Industries*, especially in light of *Benzene*, *INS v. Chadha*, 462 U.S. 919 (1983), and *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) ("*Chevron*"). *See* ATA Conditional Cross-Petition at 15-26. Therefore, we agree with the cross-petitioners' reformulation of the question to be presented: "Whether the Clean Act requires that the Environmental Protection Agency must, in setting nationwide air-quality standards, ignore all factors 'other than health effects relating to pollutants in the air,' given that considerations of such factors would permit both the Agency and reviewing courts

to avoid confronting constitutional nondelegation issues." ATA Conditional Cross-Petition at 2-3.

II. THE COURT CAN AND SHOULD USE THIS CASE TO SETTLE THE PROPER APPLICATION OF THE NONDELEGATION DOCTRINE AND TO SORT OUT THE ROLE OF ALL THREE BRANCHES OF GOVERNMENT IN ADAPTING LAWS TO CHANGING FACTS.

The proceedings below reveal not only a statutory delegation of legislative authority "not canalized within banks that keep it from overflowing." *Schechter Poultry*, 295 U.S. at 551 (Cardozo, J., concurring), but an urgent need for this Court to update its guidance for lower court navigation of hitherto uncharted nondelegation waters. The basic doctrine remains intact. *See Food and Drug Administration v. Brown & Williamson Tobacco Corp.*, No. 98-1152, 529 U.S. –, ("*Brown & Williamson*"), slip op. at 39 ("[A]n administrative agency's power to regulate in the public interest must always be grounded in a valid grant of authority from Congress."). But its application is subject to widespread dispute. *See* 195 F.3d at 15 (Silberman, J., dissenting from denial of rehearing en banc) ("The panel, purporting to rely on interpretation . . . . By so doing I believe the panel undermines the purpose of the nondelegation doctrine.") Clearer instruction from this Court would dispel much of the prevailing confusion. *See* Benjamin Cardozo, *The Nature of the Judicial Process* 178 (1921) ("Little by little the old doctrine is undermined. . . . Finally we discover that the contour of the landscape has been changed, that the old maps must be cast aside, and the ground charted anew.").

Nondelegation decisions in 1935 invalidated Acts of Congress as unconstitutional; today nondelegation is typically combined with the doctrine of constitutional avoidance to provide rules of statutory construction. *See*

Mistretta, 488 U.S. at 371-74 & n.7 (reviewing cases). The underlying principle – legislative accountability – remains unchanged. But the roles of the actors need clarification.

A. The Court Should Update and Refocus the Nondelegation Doctrine on Accountability By Reaffirming A Narrow Rule Of Construction.

The constitutional basis for the nondelegation doctrine, Article I, section 1 ("All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives."), both empowers and constrains the Legislature. As the Court explained in *Schechter Poultry*, "Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested." 295 U.S. at 529. But this provision also constrains the other two branches: neither the Judiciary nor the Executive may legislate on its own authority and initiative, *i.e.*, without an "intelligible principle" having been first laid down by Congress. *J.W. Hampton, Jr. & Co. v. United States,* 276 U.S. 394, 409 (1928).

On rare occasions a statute will violate the nondelegation doctrine on its face – NIRA was such a case – because it displays "delegation running riot." *Schechter Poultry,* 295 U.S. at 553 (Cardozo, J., concurring). More often, the combination of a statute's breadth and its ambiguity does not raise a question as to the constitutionality of its delegated authority until an agency attempts to interpret and apply the statute in a concrete setting.

MAPI respectfully submits that the inherent difficulty in enforcing the nondelegation doctrine (*see Mistretta, supra*), would be mitigated if the Court were to grant *certiorari* and reaffirm both a narrow rule of construction in cases such as this and the Court's own preference for vacating rules rather than statutes as a reasonable and practical way to enforce the constitutional separation of

powers between the two political Branches without wreaking unnecessary havoc on legislative and administrative processes.

When nondelegation raises questions about the constitutionality of a legislative enactment, both the agency and the reviewing court have an obligation to construe the statutory delegation of authority narrowly. *Cf. United States v. Heth,* 3 Cranch 399, 413 (1806)(Paterson, J.) ("[T]he words of a statute, if dubious, ought . . . to be taken most strongly against the law-makers."); *Cipollone v. Liggett Group, Inc.,* 505 U.S. 504 (1992) (Scalia, J. & Thomas, J., concurring in the judgment in part and dissenting in part)("[A]ny ambiguity concerning [a preemption clause's] scope will be read in favor of preserving state power.").

Of course, when the consequences of an agency's rulemaking are massive, any interpretation of an agency's statutory authority "must be guided to a degree by common sense as to the manner in which Congress is likely to delegate a policy decision of such economic and political magnitude to an administrative agency." *Brown & Williamson,* slip op. at 10.

If the agency is unable to identify an intelligible principle adequate to sustain its regulation, the reviewing court must decide whether to vacate the enactment of the Legislature or the action of the Executive. This Court consistently has preferred the latter as a less drastic remedy. *See Mistretta,* 488 U.S. at 373 n.7 (citing *Benzene,* 448 U.S. at 646; *National Cable Television Assn. v. United States,* 415 U.S. 336 (1974)).

A remand to the administrative agency, such as the Court of Appeals ordered in this case, should be viewed neither as an appeal to the Executive's dispassionate expertise in statutory interpretation nor as an attempt to salvage a foundering statute. Rather, it is simply the most practical way for courts to resolve a conflict between ambiguous legislative authority and a particular agency regulation. This "no-fault" remand should not be thought of

as a "weak form" of the nondelegation doctrine, since the riot gear (overturning the statute) is still available for cases where it is needed.

It is not an unreasonable burden to require an agency either to explain the basis and scope of its discretion or, in the event that its authority is found wanting in the light of new science or technology, to propose a legislative expansion of its authority. The alternative – to permit an agency effectively to amend the statute in view of new science – while perhaps expedient, is constitutionally impermissible.

B. When Congress Delegates Broad Authority, It Should Include Limiting Principles That Are Both Intelligible and Durable.

This Court has long recognized the need for Congress to be able to delegate broad authority to an administrative agency. "[O]ur jurisprudence has been driven by a practical understanding that in our increasingly complex society, replete with ever changing and more technical problems, Congress simply cannot do its job absent an ability to delegate power under broad general directions." *Mistretta,* 488 U.S. at 372.

But the Court is right to insist that such delegations be accompanied by an intelligible principle to guide the agency's exercise of discretion, in order to preserve the chain of political accountability between the Congress and the consequences of its legislative acts. Where governmental actions require difficult tradeoffs, it is essential that they be exposed to the discipline of political debate and democratic choice.

Congress does not fully discharge its duty merely by voting for good science, public safety, and a clean environment, without giving attention to the means by which statutory goals are achieved and to the range of consequences they may entail. Congress must not only "delineate[] the

general policy" an agency is to apply, it must also set "the boundaries of this delegated authority." *American Power & Light Co. v. SEC,* 329 U.S. 90 (1946).

We argue (supra) that these statutory boundaries should be construed narrowly against a background of changing science. But a principle of narrow construction need not interfere with valid Congressional delegations of authority, as long as the statute makes an appropriate provision for taking new information into account.

For instance, an intelligible principle that requires an administrative agency to balance the beneficial and harmful consequences of its actions is one that can accommodate a wide variety of factual circumstances and changing scientific understandings, without becoming impermissibly broad or vague.[4] It conveys the authority to take a range of actions in response to new information, but it harnesses that authority to a principle that is versatile without being vagrant. It permits the agency to cause harms or to impose substantial costs and obligations – even if they go far beyond what was anticipated by Congress – but only to the extent that they are warranted by a commensurate advancement of statutory objectives.

In contrast, a statutory principle that requires an administrative agency to ignore the harmful consequences of its actions – such as EPA finds in the Clean Air Act – cannot be regarded as durable, however intelligible it may be.[5] Such language must be construed narrowly to apply only to the particular factual context of the original legislation, because

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[4] Lutter and DeMuth, supra n.3, at 2."Setting a standard based on two factors – one increasing and the other decreasing as the standard changes – produces, in principle, a determinate result."

[5] Various commenters have argued that the consideration of costs in setting NAAQS is forbidden (Petitioner EPA), permitted (Cross-petitioners), or required (Lutter & DeMuth). Without trying to resolve the dispute here, MAPI submits that if such consideration is forbidden, the EPA's authority must be narrowly construed. MAPI agrees with cross-petitioners that the Court should review the holding below that *Lead Industries* precludes EPA's consideration of costs.

to do otherwise would impermissibly sever the legislative act from its adverse consequences. If new science becomes available it cannot be presumed that Congress would arrive at the same conclusions that it did at the time of enactment, because (a) it could not consider adverse consequences of which it was not then aware AND (b) it made no provision for the agency to take account of them in an intelligible way.[6] When the Congress puts blinders on an agency, it also applies handcuffs, for an agency cannot be empowered to reach farther than it can see.

Nothing in the Constitution requires that the Congress use a substantive benefit-cost balancing standard when writing laws; nor does it require that the Congress impose such a standard on decisions it delegates to administrative agencies. If it wishes to enact a delegation of authority that is broad and durable, however, the Congress should choose some form of versatile standard that instructs the agency to balance the anticipated desirable and undesirable consequences of proposed administrative actions. Courts should give this form of delegation wide latitude, while at the same time reading narrowly other forms of delegation that are too rigid to allow for administrative adaptation to new facts. That is, the very versatility of the relevant "intelligible principle" can and should play a role in determining how far a particular congressional enactment is intended to reach.

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[6] The majority opinion in *Brown & Williamson* correctly inferred that the rigidity of the statute – unsafe devices must be banned – argued for a narrow construction that did not treat cigarettes as a device. Slip op. at 19. The dissent argued that one could just as easily conclude that such a ban was required (Breyer, J., dissenting), sip op. at 14. Yet the rigidity of the statutory language compels the Court to apply it narrowly; a more flexible "balancing" principle might have been read more broadly.

C. When An Administrative Agency Feels Compelled To Act, But Finds That Changes In Science Have Rendered An Intelligible Principle Unworkable, The Agency Should Seek A Legislative Extension Of Its Authority.

The Court of Appeals in this case correctly recognized the difficulties inherent in a statute that ostensibly takes no account of costs and is applied to a pollutant whose harm displays no discernible threshold. Lacking a clear decision point, and lacking any overt balancing process, the reviewing court was left contemplating the black box of the unconstrained "judgment of the Administrator." The Circuit Court correctly concluded that the EPA's interpretation of Section 109 did not meet the established "intelligible principle" standard. Without a stated statutory limit on the EPA's discretion, the delegation appears "unconfined and vagrant." *Schechter Poultry*, 295 U.S. at 551 (Cardozo, J., concurring).

Following *Chevron,* the Court of Appeals in this case found that it is up to the agency – not the reviewing court – to rescue the constitutionality of the delegation by discerning the requisite intelligible principle. Of course, the agency, just like the reviewing court, must look to the text, context, and history of the congressional delegation to find such a principle, because Congress is the institution constitutionally accountable for the consequences of any expansion of the "standards of legal obligation." *Schechter Poultry,* 295 U.S. at 530.

Often, however, even where Congress has enacted an intelligible principle into law, some unanticipated change in science or technology may cause that principle to become obsolete, or fail to provide intelligible parameters in certain factual settings.

Under these circumstances, if the agency proposes to promulgate regulations that respond to a changed factual landscape, but cannot find an intelligible principle that

applies to the circumstances at hand, it should request from Congress an expansion of its authority. No administrative agency may lawfully address a given factual situation if its authorizing statute lacks an intelligible principle that can accommodate that situation. Nor can the agency solve the problem merely by consulting with scientists. Science dwells in the realm of fact, and fact by itself cannot make law.

Modern statutes, such as the Clean Air Act, frequently delegate authority to the Executive to decide what is "safe" or "adequate" or "requisite" to protect "the public health." One consequence is that agency rules are often based on scientific findings that are difficult for the courts to review. The degree to which a court should scrutinize an agency's scientific findings, and the degree to which this agency's science could withstand such scrutiny, are both interesting questions. But the more fundamental question is whether science is capable of resolving disputes that have deep economic and political dimensions.

In the present case, the EPA proposes a regulatory regime that imposes far greater costs than benefits – costs that the agency itself refuses to consider. A decision of this gravity must at some point acquire political legitimacy, and the agency must look to Congress to provide it. This political legitimacy can take the form either of an intelligible principle discerned from an existing statute (one adequate to the factual situation), or of an enactment expanding the agency's authority. But neither the judgment of an Administrator nor the conclusions of science can substitute for legislative deliberation.

The agency, whose action precipitated the controversy before the court, is in the best position to decide which of three courses to take: (1) Develop a new interpretation of its statutory authority that dispels any concern about unaccountable delegation; (2) Scale back its own regulation to comply with a narrower interpretation of its statutory authority; or (3) Propose to the Congress a statutory

amendment that would grant the agency the authority it believes it needs.

Petitioner EPA in this case would spurn all three avenues and now asks the Court, in effect, to remove the constitutional impediments to its free exercise of self-ascribed authority. MAPI respectfully urges the Court to grant *certiorari* in order to dispel any notion that such carte blanche authority can be countenanced within the constitutional separation of powers.

CONCLUSION

As this case provides an opportunity for the Court to enunciate the relevance of the nondelegation doctrine in reviewing agency interpretations of broad grants of authority in spheres of rapidly changing science, *amicus curiae* MAPI supports granting a writ of *certiorari*.

Respectfully submitted,

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